

## TITLE 327 WATER POLLUTION CONTROL BOARD

LSA Document #05-218

### SUMMARY/RESPONSE TO COMMENTS RECEIVED AT THE FIRST PUBLIC HEARING

On August 9, 2006, the water pollution control board conducted the first public hearing/board meeting concerning the establishment of a Combined Sewer Overflow (CSO) wet weather limited use subcategory and permit compliance schedules for qualifying communities affected by CSOs. Comments were made by the following parties:

Tom Anderson, citizen (TA)  
Constance Clay, Save the Dunes Council (SDC)  
Charlotte Read, citizen (CR)  
Jim Meyer, citizen (JM)

Following is a summary of the comments received and IDEM's responses thereto:

*Comment:* Michigan City is a CSO community that has been dealing with the issue of overflows for a very long time. The issue is very important to Michigan City because it is a municipality with beaches along Lake Michigan. Michigan City, with no use of federal money, has been able to provide significant reductions in the amount of its sewage overflows over the last five or six years due to bonding for an overflow basin of about seven million gallons. IDEM should be encouraging communities to follow creative solutions to the CSO problem so that a disincentive is not created for making treatment system improvements without suspending a use to meet a requirement. It is not fair treatment of Michigan City that has dealt with the CSO problem while other communities rely on delay or avoidance of solving the problem. More technical assistance should be provided to communities to utilize the MS4 storm water program to reduce the amount of storm water that ends up in sewer systems. The Michigan City headwaters have been redesigned so that the overflow basin receives some of the storm water at least to be given primary treatment. Protection of downstream uses is critical especially when the downstream community has public bathing beaches that have a significant economic impact on the local community and the state as a whole. There are some very expensive ways to solve the CSO problem, but, from the view point of a beach community that has already accomplished a large corrective measure in dealing with the problem, the message needs to be promoted that there are alternatives as well for affecting solutions. (TA)

*Response:* IDEM agrees that it is important to explore creative solutions to this difficult problem. Each CSO community faces different challenges and it is IDEM's goal to provide a suite of tools and options for the communities to address the CSO problem. This rule is not intended to promote delay or avoidance of the problem. Rather, it is designed to be another option available to communities to encourage the development of long term control plans that will improve water quality.

*Comment:* Save the Dunes Council recognizes the complicated issue of combined sewer overflows but hopes that IDEM will work to ensure that the State of Indiana upholds the provisions to protect the waters of Indiana as set forth in the Clean Water Act. The draft rule clearly delineates the requirements a CSO community will need to satisfy in order to receive a wet weather limited use designation; however, Save the Dunes proposes the inclusion of the following additional language to 327 IAC 2-1-3.1(a), "and that such limited use subcategory will not negatively affect the capacity of downstream waters to meet their full recreational designated

use.” (SDC)

*Response:* In order to obtain the wet weather limited use subcategory, a CSO community must perform a use attainability analysis, which includes an analysis on the effects of the community’s CSOs on downstream users. Clearly, this rule cannot violate the tenets of the Clean Water Act, and IDEM is working with EPA in the development of this rule language to assure compliance with the Act.

*Comment:* The primary focus should be on preventative, cost-effective measures for reducing storm water overflows into the treatment system to allow the treatment facility to adequately process municipal sewage. It is paramount to find ways to mitigate excessive amounts of water going into the sewer system. Over the last several years, Save the Dunes and other conservation organizations in Northwest Indiana have been working diligently in designing strategic conservation programs with on-the-ground implementation, such as storm water management plans and watershed conservation, which directly address impervious surface runoff and storm water retention in order to protect the quality of valuable water resources in this region. IDEM should capitalize on these conservation efforts as a means of developing long-term goals that will not compromise the integrity of noncompliance mandates to ensure the economic vitality of our cities, the health of the public, and the waterbodies of Indiana. (SDC)

*Response:* IDEM agrees that water conservation programs along with effective storm water management plans are vital components in the strategy to address water quality in Indiana. IDEM hopes to provide communities with the opportunity to integrate storm water management with CSO control as well as other creative options for improving water quality. Storm water inflow is one component to be addressed in each CSO community’s long term control plan.

*Comment:* There can be no reasonable discussion of protection for existing uses and the level of water quality to protect those uses without a solid antidegradation policy in force. It is recommended that IDEM take measured steps to develop and implement an antidegradation policy to ensure water quality standards are upheld in Indiana. (SDC)

*Response:* IDEM agrees and work on the statewide antidegradation rulemaking is moving forward. There currently exists an antidegradation policy for the GLI basin, which includes northwest and northeast Indiana.

*Comment:* The economic vitality in the Northwest region is central to the water quality in Gary; therefore, this rule to change the designated recreational use to limited use, while proposed because of combined sewer overflows, needs to recognize that serious effort should be put forth toward conservation efforts that would mitigate the storm water overflows to allow the facility to treat the sewage it receives. (SDC)

*Response:* IDEM agrees that conservation and storm water management plans are important components in improving Indiana’s water quality. Such plans should be part of CSO communities’ long term control plans.

*Comment:* The time this rule allows for communities to develop long term control plans creates the problem of allowing the communities to drag their feet rather than finding creative ways to deal with their storm water problems. (SDC)

*Response:* That is not the intention of this rulemaking. The fact is that fixing Indiana’s antiquated CSO systems is an expensive and difficult problem. IDEM recognizes that communities must balance infrastructure improvements that will lead to environmental improvements with the many other problems competing for taxpayer dollars. This rule does not, in itself, provide additional time for communities to develop and implement long term control plans. By providing certainty as to the process and the expectations IDEM holds for these communities, it is IDEM’s hope that the rule will actually encourage quicker development and

implementation of these plans, which will lead to improved water quality.

*Comment:* The proposed creation of a limited use recreational category is a downgrade of water quality in streams now receiving combined sewer overflow discharges from one hundred five (105) communities. Such a rule violates both the spirit and intent of the Clean Water Act. Water quality standards are intended to protect not only designated uses but existing uses as well. If full body contact recreation is an existing use in the affected streams, how does this proposed new recreational subcategory protect that existing use? (CR)

*Response:* Full body contact recreational is a designated use, not an existing use. The Clean Water Act allows for use designations to be changed if a use attainability analysis is performed, as reflected in this rulemaking. Waters receiving CSO discharges during wet weather events are not safe for recreational use and the use designation should be reflective of the actual use attained. If the use attainability analysis done by a CSO community does not support the granting of the wet weather limited use designation during wet weather events, no use designation change will be granted.

*Comment:* Is the goal of long term control plans the elimination of CSO discharges? The proposed rule does not have that as a goal. (CR)

*Response:* The goal of long term control plans is to ensure that CSOs meet water quality standards. This can be accomplished by methods other than complete elimination of the CSO. If the CSO discharge is treated, the impact of the CSO is eliminated and the goal of achieving water quality standards is accomplished.

*Comment:* It is unclear what are the water quality standards for the stream during the four days after the CSO discharge ends while the limited use recreational category would remain in effect. Would the standard protect partial body contact? Would it ban recreational contact with the water? Would it ban fishing or boating? (CR)

*Response:* The exact standards to apply during the wet weather limited use subcategory have not been determined.

*Comment:* The proposed rule does not address the issue of protecting downstream uses during and after the four days while the limited use recreational category would remain in effect. However, 327 IAC 2-1-10(b)(1)(E) requires the commissioner to consider, among other factors, whether potential or existing use made of the waterbody by people in the immediate areas would not be adversely affected by a limited use designation. (CR)

*Response:* In order to obtain the wet weather limited use subcategory, a CSO community must conduct a use attainability analysis, which includes an analysis on the effects of CSO outfalls on downstream users. Therefore, the effects will be considered before the limited use designation will be granted.

*Comment:* Many of the numerous beach closures and swimming bans at Lake Michigan beaches are the result of CSO discharges to Lake Michigan tributaries which end up affecting recreational water quality and public use and enjoyment. The Clean Water Act was amended several years ago to enhance protection of coastal beaches, including those on the Great Lakes. As well, the impact of CSO discharges on Lake Michigan water supply intakes is a concern and must be considered even if public water supply safety is not a recreational use. (CR)

*Response:* The purpose of this rulemaking is to allow communities to move forward with the development and implementation of long term control plans designed to reduce or eliminate CSO overflows and improve water quality.

*Comment:* Lake Michigan, parts of the Little Calumet River, and Salt Creek are designated Outstanding State Resource Waters (OSRWs) and are entitled to additional protection. Indiana's Great Lakes rules for water quality are the only Indiana water rules

presently addressing antidegradation protection. That protection is enhanced when OSRWs are affected by antidegradation protection and by discharges. How does this rule protect OSRWs and antidegradation standards? (CR)

*Response:* This rule does not violate the GLI antidegradation standards nor provide less protection to OSRWs than what is already provided. The intent is to provide a process whereby CSO communities can move forward with long term control plans as required by the Clean Water Act.

*Comment:* Do these proposed rules and rule amendments offer improved water quality for our waterways including Lake Michigan? (CR)

*Response:* Ultimately this rule will improve water quality. It provides another option to CSO communities that are trying to develop and implement long term control plans that will improve water quality.

*Comment:* Is development and implementation of a limited use recreational subcategory considered backsliding? (CR)

*Response:* The Clean Water Act allows for amendment of a designated use through the development of a use attainability analysis. The granting of a wet weather limited use designation would not occur if it were determined that such a designation constituted backsliding under the Act.

*Comment:* Does IDEM know the time frames included in long term control plans? Is it as much as or more than thirty years? (CR)

*Response:* Each CSO community is different and therefore it is difficult to generalize on time-frames. Each community is required to develop plans which include a detailed analysis of the technical and financial feasibility of the plans.

*Comment:* Long term control plans, use attainability analyses, and a limited use recreational subcategory for one hundred (105) dischargers of combined sewer overflows will never solve the CSO problem nor substantially improve it until IDEM and the Water Pollution Control Board deal with the long-standing practice of CSO communities who continue to add new sewer connections to their combined systems thereby exacerbating the problem. (CR)

*Response:* One of the purposes of the long term control plan is to plan for future growth as well. IDEM is aware that there are many stressors to Indiana's waters, but providing a process for CSO communities to move forward with plans to improve CSO control is a positive step in improving the water quality.

*Comment:* By being willing to accept something less than the perfection of fishable and swimmable waters required under the Clean Water Act, state legislation under Senate Enrolled Act 620 and this proposed rule will allow communities to develop long term control plans and actually implement those plans by building the very structures, equipment, and fixtures that would, in fact, help clean up the water. For years, municipalities that were attempting to develop and implement long term control plans but were not able to demonstrate that they would in the end eliminate CSOs could not receive IDEM's approval. As a result of not having approved long term control plans, no implementation was undertaken of any means of CSO reduction. SEA 620 and this proposed rule will finally allow implementation to occur because the rule says that only after a community has fully implemented its long term control plan does it have a right to some relief in the form of the limited use subcategory. For this reason, the Water Pollution Control Board should support and pass this proposed rule. (JM)

*Response:* IDEM agrees that the "all or nothing" approach has not been effective in helping CSO communities move forward to solve this difficult problem. By requiring full implementation of the approved long term control plan prior to granting a limited use

designation, IDEM believes significant improvement in water quality will be achieved. Communities are not required to apply for the designation and many may not need to due to the improvements in water quality achieved through the implementation of the long term control plan.

*Comment:* One of the requirements of the long term control plan is to demonstrate that all reasonable possible alternatives have been considered in deciding what controls the community is going to implement. The storm water program has sought to address the area of run-off, but it too is linked to the CSO problem. For example, Gary has cut its combined sewer overflows by around sixty (60) percent over the last six years. However, it still discharges about three to four million gallons in an average year. At the same time, it must be recognized that Gary has combined to treat eight and a half (8.5) billion gallons of storm water which under a separator system would go directly into the river. The increased amount of storm water, while not the same as CSO, is a significant contributing factor to the degradation of the water quality in streams, rivers, and lakes. There should be an overall analysis of the waste that is allowed under this process. (JM)

*Response:* IDEM agrees that CSO control is one important way to improve water quality, but other issues such as storm water management and non-point source control measures are necessary components of a comprehensive water quality improvement plans.

